Supreme Court of the United States

October Term, 1967

No. 823

UNIFORMED SANITATION MEN ASSOCIATION, INC., ET AL.,

Petitioners,

against

COMMISSIONER OF SANITATION OF THE CITY OF NEW YORK, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered herein on September 20, 1967.

Opinions Below

The opinion of the Court of Appeals, as yet unreported, appears at Appendix B, *infra*, pp. 4a-14a. The opinion of the District Court is unreported and appears at Appendix D, *infra*, pp. 17a-20a.

Jurisdiction

The judgment of the Court of Appeals was entered on September 20, 1967 and appears at Appendix C, *infra*, pp. 15a-16a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Were the dismissals from employment of the individual petitioners, pursuant to Section 1123 of the New York City Charter, in violation of their privilege against self-incrimination, their right to due process and their immunities and privileges under the Fourteenth Amendment?

2. Are dismissals from public employment, resulting from wiretapping of the employees' telephone conversations without the participants' consent, unlawful because the wiretapping violated the Federal Communications Act of 1934, 47 U.S.C. § 605, the employees' constitutional right to privacy and the prohibition against unlawful search and seizure under the Fourth and Fourteenth Amendments?

Constitutional Provisions and Statutes Involved

The constitutional provisions involved are Article I, Section 10; Article VI, Clause 2; and the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution.

The federal statute involved is the Federal Communications Act of 1934, 47 U.S.C. § 605, Appendix A, *infra*, p. 1a.

The state provisions are Section 1123 of the New York City Charter, *infra*, p. 2a and New York Code of Criminal Procedure, Section 813-a, *infra*, p. 3a.

Statement of the Case

In November, 1966 the Commissioner of Investigation of the City of New York conducted an investigation of employees of the Department of Sanitation in the course of which he placed a wiretap upon the telephone at the employees' place of employment pursuant to an order of the New York Supreme Court and intercepted, recorded

and divulged their conversations (R. 7a).[1] In the same month he directed each of the individual petitioners employed by the Department of Sanitation to appear before him; charged them, in separate hearings, with criminal behavior; and informed them that he had recordings of their telephone conversations, some of which he played back to them (R. 7a).

The Commissioner also informed the petitioners that they were entitled to assert their constitutional privilege against self-incrimination, but that if they did so they would be dismissed from employment pursuant to Section 1123 of the New York City Charter, *infra,* p. 18a. Twelve of the petitioners asserted their privilege against self-incrimination, *ibid.* The Commissioner of Sanitation then suspended them for invoking the privilege, *ibid.*, served them with charges to the same effect and dismissed them after a hearing in which the only evidence against them was their assertion of the constitutional privilege in the proceedings before the Commissioner of Investigation, *infra,* pp. 10a-11a. The notices of dismissal all stated that they were dismissed pursuant to Section 1123 of the New York City Charter for asserting their privilege, *infra,* p. 11a.

Three other petitioners who answered the Commissioner of Investigation's questions denied their guilt and were suspended on December 2, 1966 by the Commissioner of Sanitation by reason of "information received from the Commissioner of Investigation concerning irregularities arising out of your employment in the Department of Sanitation" (R. 7a). At the suggestion of the District Attorney the Department of Sanitation requested these employees to postpone their hearings upon the charges of irregularities filed against them. When the employees refused to postpone their disciplinary hearings, they were

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[1] References designated "R." refer to the Joint Appendix in the Court of Appeals, one copy of which has been filed in this Court simultaneously with this petition.

summoned by the District Attorney before the grand jury and asked to sign waivers of immunity which they declined to do, *infra*, p. 11a.

These employees were then served with amended charges by the Department of Sanitation to the effect that they had violated Section 1123 of the Charter by their refusal to waive immunity before the grand jury, *ibid.* In hearings conducted before a Deputy Commissioner of that Department, the latter proceeded solely upon the amendment to the charges relating to the refusal to waive immunity and not upon the original charges of irregularities. On February 9, 1967 the Commissioner of Sanitation dismissed the three employees from their employment, in accordance with Section 1123 of the New York City Charter, solely because they had refused to execute waivers of immunity before the grand jury, *ibid.*

The petitioners, including the collective bargaining agent for most of them, thereupon instituted an action for a declaratory judgment that the suspensions and discharges were illegal because Section 1123 of the Charter violated the employees' rights under the Fifth and Fourteenth Amendments to the United States Constitution and because the wiretapping violated the Federal Communications Act of 1934, 47 U.S.C. § 605, and impaired their right to privacy and their right against unlawful search and seizure under the Fourteenth Amendment (R. 9a-10a). They also sought discovery and an injunction against the continuation of such illegal conduct (R. 10a).

The district court denied petitioners' motion for preliminary injunction and for discovery, and granted the respondents' motion to dismiss the complaint, declining to exercise jurisdiction on the basis of the abstention doctrine, *infra*, p. 19a. It emphasized that its decision "is in no manner a determination by this court that Section 813-a of the New York Code of Criminal Procedure and Section 1123 of the Charter of the City of New York are constitutional."

Infra, p. 20a. It added that "[t]his court is confident that the state courts of New York are sensitive to and will give careful consideration to the very serious constitutional issues that the plaintiffs have raised herein", *ibid.*

The Court of Appeals decided the case upon the merits because of further administrative action taken in the Department of Sanitation since the district court's decision and because an intervening decision of the New York Court of Appeals had "removed any ground there may have been for federal abstention", *infra*, p. 12a. It affirmed the dismissal of the complaint holding (i) that petitioners had no constitutional privilege against self-incrimination to refuse "to answer questions as to their conduct in office", *ibid.*, and (ii) that the wiretapping had violated neither the Federal Communications Act, 47 U.S.C. §605 nor petitioners' constitutional rights, *infra*, p. 13a.

Reasons for Granting Writ

I. The Decision Below, in Direct Conflict With This Court's Decision in *Slochower* v. *Board of Education*, 350 U.S. 551, upholds the Automatic Termination of Public Employment Upon Invocation of the Privilege Against Self-Incrimination.

1. The decision below is squarely in conflict with this Court's decision in *Slochower* v. *Board of Education*, 350 U.S. 551, which held that Section 903 of the New York City Charter, as interpreted and applied by the New York courts, violated the due process clause of the Fourteenth Amendment. That section (identical in language with the present Section 1123) provided that where any city employee refused to testify concerning city affairs "on the ground that his answer would tend to incriminate him, or shall refuse to waive immunity from prosecution . . . his term or tenure of office or employment shall terminate."

The New York Court of Appeals in *Daniman* v. *Board of Education of the City of New York*, 306 N.Y. 532, 119 N.E. 2d 373 (1954), *appeal dismissed* 348 U.S. 993, had construed Section 903 as providing for the automatic dismissal of City employees who assert their privilege against self-incrimination:

> "The assertion of the privilege against self-incrimination is equivalent to a resignation. . . . There is nothing novel about such a statute. Other statutes provide for the vacatur of, or forfeiture of, an office or employment upon the happening of an event specified therein." *Id.* at 538, 539.

In *Slochower*, this Court reversed the New York Court of Appeals, holding that "[t]he heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive. Such action falls squarely within the prohibition of *Wieman* v. *Updegraff, supra.*" *Id.* at 558.

Despite the Court's direct holding in *Slochower* that Section 903 was unconstitutional, Section 1123, identical in language with Section 903, was enacted in November 1961. This section was the basis for the warning by the Commissioner of Investigation that if any employee asserted his constitutional privilege, he would be dismissed from his employment; and indeed twelve employees were dismissed for asserting their constitutional privilege, while the remaining three were dismissed for refusing to waive immunity before a grand jury. The court below, in spite of the controlling effect of *Slochower*, did not even mention that decision.

2. The decision below also appears to be inconsistent with a line of decisions in this Court subsequent to *Slochower* holding that the Fourteenth Amendment prohibits not only arbitrary and summary dismissal from public employment but also compulsory self-incrimination

by the states. In *Malloy* v. *Hogan,* 378 U.S. 1, 6, the Court enunciated the rule that "the Fifth Amendment's exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgement by the States." This principle has been affirmed and upheld by the Court in subsequent decisions, *Murphy* v. *Waterfront Commission of New York Harbor,* 378 U.S. 52; *Stevens* v. *Marks,* 383 U.S. 234; *Spevack* v. *Klein,* 385 U.S. 511; and *Garrity* v. *State of New Jersey,* 385 U.S. 493.

In *Garrity,* the Court held it to be a violation of the Fourteenth Amendment to admit into evidence in a criminal proceeding the statements of police officers obtained from them under a state statute that compelled them to make such statements or to be discharged from employment. The Court said that "[t]he option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent." *Garrity* v. *New Jersey, supra,* at 497.

In distinguishing the celebrated statement of Mr. Justice Holmes in *McAuliffe* v. *New Bedford,* 155 Mass. 216, 29 N.E. 517 (1892), that one "has no constitutional right to be a policeman", the Court said that "[o]ur question is whether the Government, contrary to the requirement of the Fourteenth Amendment, can use the threat of discharge to secure incriminatory evidence against an employee", *Garrity* v. *New Jersey, supra,* at 499, and it concluded that "policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." *Id.* at 500.

In *Spevack* v. *Klein,* 385 U.S. 511, the Court held that the disbarment of a New York attorney for refusing to testify and produce records in a state judicial inquiry into unethical practices violated his constitutional guarantee against self-incrimination under the Fourteenth Amendment. The Court, overruling its earlier decision in *Cohen* v. *Hurley,* 366 U.S. 117, said that it found "no room in the

privilege against self-incrimination for classifications of people so as to deny it to some and extend it to others." *Spevack* v. *Klein, supra,* at 516.

The court below sought to distinguish only one of these cases—*Garrity* v. *New Jersey, supra,*—by stating that its "holding has no application to the present case where the employees did not testify, but relied upon their claims of privilege", *infra,* p. 12a. While it is true that *Garrity* involved the use in a criminal proceeding of "testimony which was coerced by threat of loss of employment", *ibid.*, the principle upon which it stands is undermined by the court's decision below. If the fruits of an illegal coercion cannot be used in a criminal proceeding, surely the employee cannot be dismissed for refusing to yield to such coercion. In one case the employee yields to the coercion and perhaps incriminates himself, and in the other case he does not yield and is dismissed from employment.

3. The instant case, if not governed as we believe by this Court's decision in *Slochower* striking down the Charter provision as unconstitutional, would then present a broader issue: whether even absent such a statute automatically terminating public employment upon assertion of the constitutional privilege, an employee may be dismissed for invoking it in an investigation into his official conduct.

This is the issue which this Court expressly left open in *Spevack* v. *Klein, supra,* at 516, when it found it unnecessary to decide "[w]hether a policeman, who invokes the privilege when his conduct as a police officer is questioned . . . may be discharged for refusing to testify." This certainly is an open issue of considerable public importance which should be resolved by this Court unless the instant case is decided in petitioners' favor upon the narrower ground that this case is controlled by *Slochower.*

The court below limited its consideration of the broader issue to a rhetorical question, "Can there be any reasonable

doubt that an employee, especially one who has been warned of the consequences of his refusal to answer, can be (and, indeed, should be) discharged for such refusal?", *infra*, p. 12a. In answering this question in the negative, the court below disregarded the foregoing decisions, and relied exclusively upon an erroneous construction of this Court's decision in *Nelson* v. *County of Los Angeles*, 362 U.S. 1, *infra*, p. 12a. For in *Nelson*, the Court was not reviewing a statute directed specifically at the assertion of the constitutional privilege, but was upholding one which authorized dismissal for refusing on any grounds to answer questions concerning "subversion". This Court's decision in *Nelson* is an affirmative reason for granting certiorari here since in that case the state court's decision as to the permanent employee involved was upheld without opinion by an equally divided vote in this Court.

Even with respect to the temporary employee involved in *Nelson*, this Court's decision is significant. The Court explicitly distinguished *Slochower* and Section 903 of the New York City Charter, noting that in *Nelson*, the employee "had been ordered by his employer as well as by California's law to appear and answer questions before the federal subcommittee. These mandates made no references to Fifth Amendment privileges". *Id.* at 7. It also held that "petitioner's contention as to the Privileges and Immunity Clause of the Fourteenth Amendment . . . was neither raised in nor considered by the California Courts." *Id.* at 9. On each of these points the petitioners' position here is exactly the contrary. Furthermore, since *Nelson*, this Court decided *Malloy* v. *Hogan*, *supra*, holding that there is a federal privilege against self-incrimination in proceedings before state tribunals.

We are aware of Mr. Justice Fortas' suggestion in *Spevack* v. *Klein*, *supra*, that, subject to certain constitutional limitations, he would answer affirmatively the question of whether "a policeman who invokes the privilege

when his conduct as a police officer is questioned . . . may be discharged for refusing to testify", *id.* at 629-630. That issue deserves plenary consideration by the Court which has expressly recognized that it has yet to be directly decided. *Id.* at 516. In any event, the instant case is clearly distinguishable because the employees were suspended and dismissed in the course of criminal investigations for refusing to surrender their privilege or to waive immunity against criminal prosecution.

That these were criminal investigations, rather than disciplinary proceedings by an employer, is obvious from the fact that the Commissioner of Investigation wiretapped the employees' telephone conversations pursuant to a criminal statute, conducted a hearing in the absence of their superiors, advised them of their privilege against self-incrimination, charged them with crime and turned his evidence over to the District Attorney.

4. These problems relating to the constitutional privilege are important ones which deserve to be decided directly by this Court. We think they are controlled by *Slochower;* that they present the converse of *Garrity;* and that if "lawyers also enjoy first-class citizenship", *Spevack* v. *Klein, supra,* at 628-629, the same is true of sanitation employees. Under the decision below, the privilege is meaningless for a public employee in those states which like New York direct the automatic dismissal of public employees who assert their privilege against self-incrimination.[2] If this indeed is to be the law, it is for this Court to state it and to distinguish or overrule *Slochower, Garrity* and *Spevack.* It is plain from the opinion below that the serious constitutional issues whose existence was acknowl-

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[2] Hawaii Rev. Laws § 5-4 (1955), LSA-R.S. § 33.2426, U.A.M.S. [Mo.] § 36,410 (1959), N.J. Rev. Stat. 2A:81-17.1 (Supp. 1966), N.Y. Const. Art. I, § 6, Ohio Rev. Code Ann. § 143.271 (1953), W. Va. Code § 2835 (16) (1961); Compare Cal. Gov't. Code § 1028.1, Md. Ann. Code Art. 69, § 11 (1967 Repl. Vol.).

edged by the district court, *infra*, p. 20a, were treated most superficially by the court below. The privilege is an important one in our constitutional system. This Court has consistently insisted in a variety of contexts upon the necessity of protecting its use. *Emspak* v. *United States*, 349 U.S. 190, *Quinn* v. *United States*, 349 U.S. 155, cf. *Ullmann* v. *United States*, 350 U.S. 422. There is strong reason to suggest, in the light of two decades of consideration by this Court of the privilege that, if our accusatorial system of justice is to be maintained, an employee should be discharged upon the basis of evidence presented against him rather than upon the mere assertion of the privilege.

II. The Decision Below Upholds Dismissals From Employment Resulting From Wiretapping in Violation of the Federal Communications Act of 1934 and the Employees' Constitutional Rights Under the Fourth and Fourteenth Amendments.

1. The decision below requires review by this Court because it upholds the dismissal from employment of employees as a result of wiretapping their telephone conversations. The case poses the important question of whether such wiretapping did not violate both the Federal Communications Act of 1934, 47 U.S.C. 605, and the constitutional rights of the employees under the Fourth and Fourteenth Amendments against unreasonable search and seizure and against invasion of their privacy.

2. The petitioners and those to whom they talked on the telephone plainly did not authorize the Commissioner of Investigation to intercept their conversations to use them as a basis of interrogation or to divulge them to the Commissioner of Sanitation or to the District Attorney. Thus the case is brought squarely within the statutory proscription that "no person not being authorized by the sender shall intercept any communication and divulge or publish

the existence, contents, substance, purpose, effect, or meaning of such intercepted communications to any person," 47 U.S.C. § 605. This statute has received a broad construction from this Court in view of the congressional intent to protect the conversations of persons using the telephones. See *Nardone* v. *United States*, 302 U.S. 379, 308 U.S. 338; *Goldman* v. *United States*, 316 U.S. 129; *Goldstein* v. *United States*, 316 U.S. 114; *United States* v. *Coplon*, 185 F. 2d 629 (2d Cir. 1950), *cert. denied*, 342 U.S. 920.

3. The court below concluded that the statute had not been violated because the telephone "was leased by the City of New York and assigned to the Department of Sanitation for the conduct of its official business", *infra*, p. 13a. The federal statute, however, makes no exception based upon property rights to the telephone service. See *Benanti* v. *United States*, 355 U.S. 96; *Reitmeister* v. *Reitmeister*, 162 F.2d 691 (2d Cir. 1947); *United States* v. *Polakoff*, 112 F.2d 888 (2d Cir. 1940), *cert. denied*, 311 U.S. 653.

In this important respect the decision below is in direct conflict with prior decisions of the Second Circuit and with those of the District of Columbia Circuit in the *Coplon* espionage cases where the Government was held to have illegally intercepted the telephone conversations of its own employee in the offices of the Department of Justice, *United States* v. *Coplon, supra; Coplon* v. *United States*, 191 F.2d 749 (D.C. Cir. 1950), *cert. denied*, 342 U.S. 926.

4. Beyond the statutory proscription, this case presents the even more important claim that the wiretapping constituted an unreasonable search and seizure and an intrusion into petitioners' privacy in violation of their constitutional rights under the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

In *Olmstead* v. *United States*, 277 U.S. 438, a case arising prior to the passage of the Federal Communications Act,

Justices Brandeis, Holmes, Stone and Butler, in three separate opinions, dissented from an affirmance of a criminal conviction based upon evidence obtained by wiretapping.

The majority view in *Olmstead* has never been expressly repudiated by this Court. But the weighty authority of the dissenters together with the failure of the Court to rely upon *Olmstead* in recent years makes it appropriate for the Court to consider in this case the adoption of the *Olmstead* dissent. The latest case to cite *Olmstead* with approval was *Goldman* v. *United States, supra,* decided 25 years ago, in which Justices Stone and Frankfurter filed a concurring opinion, stating:

> "Had a majority of the Court been willing at this time to overrule the Olmstead case, we should have been happy to join them. But as they have declined to do so, and we think this case is indistinguishable in principle from Olmstead's, we have no occasion to repeat here the dissenting views in that case with which we agree." *Id.* at 136.

There was a separate dissent by Justice Murphy in an opinion based explicitly on the Fourth Amendment which concluded that "the Olmstead case was wrong", *id.* at 141.

More recently, in *Silverman* v. *United States,* 365 U.S. 505, this Court had occasion to consider the effect of *Olmstead* in a situation where an electronic listening device touched heating ducts in a house occupied by the petitioners. In reversing the petitioners' convictions, the majority of the Court did not affirm the validity of *Olmstead;* instead, it distinguished *Olmstead* by noting the "absence of a physical invasion of the petitioner's premises," *Silverman* v. *United States, supra,* at 510.

The wiretapping also violated the Fourteenth Amendment because the use made of it by the Commissioner of Investigation transgressed the standards of due process

required of the states under the Fourteenth Amendment; *cf.* the dissenting opinion of Circuit Judge Washington in *Silverman* v. *United States,* 275 F.2d 173, 178 (D. C. Cir. 1960), *rev'd,* 365 U.S. 505. The Commissioner used the wiretap recordings to support his accusations of crime and to put undue pressure upon these untutored employees. Once he played the recordings to them, it was a foregone conclusion that most of them would assert their constitutional privilege, thus requiring their automatic dismissals under Section 1123 of the City Charter.

5. The court below held that there was "no invasion of appellants' right of privacy since the telephone was not a private telephone nor did it belong to appellants", *infra,* p. 13a. The determinative issue for constitutional as well as statutory purposes, *supra,* at p. 12, however, is not the ownership of the telephone, but the privacy of the conversations. The lower court's reasoning is clearly in conflict with this Court's recent statement that "[w]e have recognized that the principal object of the Fourth Amendment is the protection of privacy, rather than property and have increasingly discarded fictional and procedural barriers rested on property concepts", *Warden, Maryland Penitentiary* v. *Hayden,* 387 U.S. 294, 304. See also *Berger* v. *United States,* 388 U.S. 41; *Camara* v. *Municipal Court,* 387 U.S. 523; *See* v. *City of Seattle,* 387 U.S. 541; *Griswold* v. *Connecticut,* 381 U.S. 479. Petitioners were entitled to freedom from search and seizure in their offices under the Court's decisions which have protected offices, *Gouled* v. *United States,* 255 U.S. 298, stores, *Davis* v. *United States,* 328 U.S. 582, automobiles and taxis, *Henry* v. *United States,* 361 U.S. 98, *Rios* v. *United States,* 364 U.S. 253.

6. The court below was also clearly in error when it held that the search (by wiretapping) was not unreasonable

because "[t]he conversations were being conducted in the course of the discharge of appellants' official duties." *Infra,* p. 13a. The attempted analogy to "public records and official documents made or kept in the administration of public office," *ibid.,* quoting from *Wilson* v. *United States,* 221 U.S. 361, is strained since there is an obvious difference between wiretapping a private telephone conversation which might disclose dereliction of the employee's duties and subpoenaing public record belonging to the government.

7. Aside from the clear error of the court below, its decision should be reviewed because it is in direct conflict with this Court's recent decision in *Berger* v. *New York, supra,* declaring unconstitutional Section 813-a of the New York Code of Criminal procedure, which section served as the basis for the wiretapping in the instant case.

The court below misread *Berger* when it limited that decision to wiretaps and eavesdropping on private premises. This Court in *Berger* made it plain that it was declaring Section 813-a unconstitutional on its face:

> "We have concluded that the language of New York's statute is too broad in its sweep resulting in a trespassory intrusion into a constitutionally protected area and is, therefore, violative of the Fourth and Fourteenth amendments." *Id.* at 44.

After analyzing the procedures set forth under the statute, the Court concluded:

> "New York's broadside authorization rather than being 'carefully circumscribed' so as to prevent unauthorized invasions of privacy actually permits general searches by electronic devices, the truly offensive character of which was first condemned in *Entick* v. *Carrington,* 19 How. St. Tr. 1029, *supra,* and which were then known as 'general warrants.'" *Id.* at 58.

and

> "In short, the statute's blanket grant of permission to eavesdrop is without adequate judicial supervision or protective procedures." *Id.* at 60.

Indeed, the concurring opinions of Justices Douglas, and Stuart, *id.* at 64 and 68, and the dissenting opinions of Justices Black, Harlan and White, *id.* at 71, 91 and 107, explicitly recognize that the Court was declaring New York's statute unconstitutional on its face. The opinions in *Berger* leaves no room for the distinction sought to be drawn by the court below.

The delegates to the 1967 New York State Constitutional Convention, in debating whether or not to include a provision on wiretapping and eavesdropping in the proposed new state constitution, recognized that the *Berger* decision had eliminated New York's statute. For example, Judge Desmond stated:

> "[T]he Berger decision of the United States Supreme Court in June . . . held that the present eavesdropping-wiretapping law in this State is unconstitutional for many, many reasons. This means, of course, that presently there is no eavesdropping or wiretapping law in the State of New York."[3]

Finally, the intimation of the court below, *infra*, p. 14a, that perhaps wiretapping could have been engaged in without resort to Section 813-a is a novel one not suggested by the litigants and totally inconsistent with the Commissioner of Investigation's application to the State Supreme Court under the wiretapping statute.

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[3] Debates, New York State Constitutional Convention, p. 3725 (Aug. 29, 1967); see also statements by Mr. Tyler, p. 3712 (Aug. 29, 1967), Mr. Bartlett, p. 3738 (Aug. 29, 1967), Mr. Bromberg, pp. 3786-7 (Aug. 29, 1967), Judge Hogan, p. 3802 (Aug. 29, 1967), Mr. Blatt, p. 3825 (Aug. 29, 1967), District Attorney Koota, p. 3866 (Aug. 29, 1967), Judge Sobel, p. 6632 (Sept. 19, 1967).

8. The wiretapping engaged in here calls for review by this Court because it is part of a pattern of increasing governmental surveillance of public employees and other citizens. See *Hearings Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary*, 89th Cong., 1st Sess. (1965); *Hearings on S. 928 Before a Subcommittee of the Senate Committee on the Judiciary*, 90th Cong., 1st Sess. (1967). New techniques have been developed which have greatly aided in this surveillance, techniques which have led to an invasion of traditional areas of individual privacy. Effective measures to protect this privacy have not kept pace with the new techniques of surveillance. See *Westin, Privacy and Freedom* (1967). If privacy is to have continued meaning in our society it is imperative that the wiretapping engaged in here be condemned.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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